

DUNCAN MILLER

IBLA 71-86

Decided April 19, 1972

Appeal from decision (NM-A 12580, Tex) dated October 13, 1970, by New Mexico state office, requiring execution of stipulations.

Affirmed.

Oil and Gas Leases: Acquired Land Leases--Oil and Gas Leases:
Applications: Generally--Oil and Gas Leases: Consent of Agency

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease. The applicant, rather than this Department, must seek any modification or qualification of the stipulation from such agency.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. FISHMAN

Mr. Duncan Miller has appealed from a decision of the New Mexico state office of the Bureau of Land Management dated October 13, 1970, requiring him to execute stipulations formulated by the Corps of Engineers.

The appellant had been the successful drawee of parcel no. 59 at a public drawing held October 7, 1970.

The parcel in issue is land acquired by the United States in connection with the Lavon Reservoir and is under the jurisdiction of the Corps of Engineers. By letter of June 25, 1970, the Corps informed the state office of the Bureau of Land Management at Santa Fe that the land in issue was "*** no longer available for oil and gas leasing except for unitization and pooling purposes only ***." The Corps requested that leases for certain lands, including the land in issue, be issued only subject to stipulations that (1) the lessee or persons acting for him would not enter the land without the written permission of the Corps' district engineer; (2) no well would be drilled thereon and no directional well would be drilled elsewhere which would cause

bore hole to be under the land; and (3) the lease is issued for the sole purpose of becoming a part of a drilling unit so that the United States would share in the royalties, but the land is not to be entered upon or drilled under.

Appellant asserts that "* * * drilling underneath the land by directional drilling * * * should have no meaningful detriment to the area involved. Consequently the stipulations should be amended accordingly."

Under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970), an acquired lands lease may be issued only with the consent of the head of the agency having jurisdiction over such lands "* * * subject to such conditions as that official may prescribe * * *" 30 U.S.C. § 352 (1970). Duncan Miller, A-30382 (May 14, 1965). Duncan Miller, 1 IBLA 266 (February 9, 1971) requires the affirmance of the decision below. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

1/ On the basis of the present record, the stipulations sought by the Corps of Engineers appear to be unreasonable since the purpose of an oil and gas lease is to provide a method whereby oil or gas may be produced from the leased premises, albeit in some circumstances, by directional drilling. No reason has been given by the Corps of Engineers for its stringent requirements and no showing has been made that these lands are needed for the formulation of a unit. However, as indicated above, the Mineral Leasing Act for Acquired Lands does not permit the issuance of a lease without the consent of, and subject to the conditions imposed by, the surface administering agency.

